

THE ROLE OF NOTARIES IN DETERRING AND DETECTING FRAUD AND IDENTITY CRIMES

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The universal rule requiring physical appearance of the signer before the Notary and the corollary recordkeeping requirement are powerful deterrents to the financially damaging scams often perpetrated by criminal impostors. Given that the infrastructure to support and educate Notaries already exists, and that the crime-deterrent tools Notaries use (including the Notary journal) have been proven reliable, the nations' 4.5 million Notaries are an effective resource available for immediate deployment in the war against all types of document fraud.

The Notary Public and its Functions

A Notary Public is a state-commissioned public official who acts as a trusted third party record keeper, verifying the identities of document signers and providing audit evidence in the event of a dispute. The requirement that the signer be physically present before the Notary enables the Notary to verify identity and to record identifying personal information.

The Notary performs four important functions:

- (1) Verify that the party to a written agreement is who she claims to be.¹
- (2) Obtain the acknowledgment of the party to an agreement that she has signed the agreement willingly and that she is aware of its contents.
- (3) Apply and affix a distinguishing mark or seal to ensure that the original document cannot or has not been altered.
- (4) Ensure that the document being notarized is complete and authentic.

While Notaries in virtually every jurisdiction can take acknowledgments, administer oaths and affirmations, and execute sworn testimony in the form of an affidavit or jurat, some states specify additional powers such as the ability to certify

¹ Note that when capturing a thumbprint and photograph, a Notary may actually authenticate the signer.

copies of original documents. Each state commissions its Notaries, prescribes their duties, and regulates their activities.

Notaries have statewide jurisdiction; they may perform notarial acts in any county or city of the state of appointment. Because of the Full Faith and Credit clause of the U.S. Constitution, notarial acts performed by a Notary in one state have the same force and effect as if performed by a Notary in the respective state.

If a relying party desires proof that a particular Notary was duly commissioned at the time the notarization was performed, typically the local county clerk or state regulating official may authenticate that Notary's commission, signature, and seal.

Evidence Produced by Notarization

Notarization yields the following important testimonial and documentary evidence:

(1) Verification of identity. The Notary must positively identify the document signer beyond a reasonable doubt, either through personal knowledge of the individual's identity, the sworn vouching of a personally known credible witness, or reliable identification documents. State requirements for ID cards vary, but typically Notaries must accept federal or state-issued identification documents that bear a photograph, signature and physical description.² True identification cannot be based on the Notary's mere familiarity with a signature.

(2) Willingness and awareness on the part of the signer. Personal appearance is the cornerstone of the notarial act, because the subsequent assurances cannot reliably be made without the signer's physical presence. The document signer must appear in person before – and communicate with – the Notary Public, face to face in the same room. Physical presence allows the Notary to not only identify the signer, but to make observations that the individual is willing and aware.

(3) The fact of the notarization and that the document is authentic. By affixing the Notary's signature and official seal, the Notary's certificate proves the execution of

² See the attached Identification Matrix. This provides a state-by state reference guide indicating the allowable methods of identification Notaries may rely upon when identifying individuals who request notarial acts. Each state regulates acceptable methods of identification for Notaries either in statute or in official recommendations.

the document and is evidence that the Notary actually was present and participated in the transaction as an impartial, third-party witness.

(4) A written or electronic record of the transaction in a journal of notarial acts. By recording critical facts about each notarization at the time the act is performed, the Notary creates an official public record that safeguards citizens' valuable property and due process rights.

Information Contained in a Notary Journal

A written or electronic journal record of a Notary's official acts provides evidence that a person physically appeared before the Notary and confirms the details of the notarization. Depending on the laws of the particular state or jurisdiction,³ the journal can capture the following information:

- Type of notarization – acknowledgment, jurat, copy certification, etc.
- Date and time of notarization.
- Type or title of the document notarized – grant deed, affidavit, etc.
- Method used to identify each signer – the Notary's personal knowledge of the signer, the name of a sworn-in credible witness who identified the signer, or identification documents.
- For each identification document used to verify identity, the Notary should record the card type, the issuing agency, a serial or other identifying number, and issuance or expiration date.
- The signature, name, and address of each document signer and credible witness.
- A description of the signer's representative capacity – guardian, power of attorney, etc.
- A thumbprint of the document signer.
- A photograph.⁴

³ See the attached Notary Journal Matrix. The information in the matrix indicates a) whether a Notary must keep a journal and the rules that govern the safeguarding of the journal (JOURNAL REQUIRED); b) the information a Notary must record in a journal for evidentiary purposes (JOURNAL ENTRIES); and c) the laws, regulations, and recommendations that govern how law-enforcement officials or the public can request a journal entry from a Notary's journal (JOURNAL ACCESS).

⁴ Note that a photograph is captured only in the electronic journal. Complete definitions of the Electronic Notary and electronic notarization are included in the most recent edition of the *Model Notary Act* (2002).

- Any unusual circumstances such as the signer's extreme nervousness or refusal to leave a thumbprint.

Best practice requires the Notary to safeguard the journal and keep it in a locked and secure area when not in use, lest the journal be compromised through theft, tampering or loss. In the event a journal is lost, stolen or damaged, the Notary must notify the commissioning official of the fact in writing.

Law Enforcement Access to Notary Records

During the time a Notary is actively commissioned, law enforcement, investigators, and the courts have several methods for gaining access or obtaining printed copies of records in the Notary's journal, including:

- Direct request to the Notary as part of a law enforcement investigation.
- State law mandating that a Notary must provide a photocopy of a line item in the Notary's journal upon presentation of a specific written request.
- State law authorizing the Notary to certify a copy of a line item in the Notary's journal for a member of the public.
- Subpoena of the Notary's records by a court.
- The Notary may be requested to relinquish control of the journal upon presentation of a criminal search warrant.

Upon expiration or revocation of a Notary's commission, twenty-nine states, territories and jurisdictions have procedures for the disposition and archival of Notary records and journals. State practices in this regard vary widely and may require Notaries to:

- Retain and store journals and records for a stated period of time.
- Deposit journals and records with the local county clerk upon resignation or revocation of the commission.
- Submit journals to the state commissioning official.
- Relinquish journals to an employer in certain limited circumstances.

National Notary Association

The National Notary Association (NNA), a non-regulatory, professional, non-profit organization, develops and disseminates notarial standards and best practices for Notaries Public in the United States. Established in 1957, the NNA is a publisher of United States Notary law materials, including *The National Notary* and the *Model Notary Act* (2002), as well as educational materials and ethical guidelines such as the *Notary Code of Professional Responsibility*. In addition, the NNA serves as an informational and legislative resource for all fifty state governments as well as the federal government on the customs, laws, and ethical practices of Notaries.

As a public service, the NNA is available to assist law enforcement with all questions concerning notarial law and practice.

Conclusion

Notarization can assist in deterring, detecting, and prosecuting fraud in the following important ways: a) Notary records protect the document signer if an instrument is later lost, altered or challenged; b) The unwillingness to leave incriminating evidence in Notary records deters forgers and imposters from carrying out crimes; c) A Notary journal makes it impossible for a Notary herself to engage undetected in falsification of a notarial act; d) By proving that a signer actually appeared, Notary records with thumbprint and signature discourage fraudulent attempts to claim that a document had not in fact been signed by the individual; and e) Notary records aid law enforcement officials in verifying and authenticating the identity of an unauthorized user of personal information.